Comments on the Americas Partnership for Economic Prosperity (APEP) Trade Track

Docket No. USTR-2024-0009


Our organizations strongly believe that any U.S. initiatives aimed at improving critical minerals supply chains must do so in a manner that prioritizes meeting the climate, job creation, and sustainable development goals of both the United States and its trading partners, while also advancing a global race-to-the-top in human rights. To meet these important goals — and to avoid replicating exploitative models of resource extraction that are so devastating to the economic and physical wellbeing of affected communities, to the global environment, and to international relations — will require both the development of agreements with enforceable rules that deliver on these goals and the careful selection of partner countries willing and able to enforce those terms or face sanctions. Any agreements must also protect the policy space needed for developing countries throughout the supply chain to meet their development challenges.

We urge you to please prioritize:

- **Promoting Critical Minerals Circularity.** Any serious discussion of critical mineral supply chain resilience must begin with a deep commitment to exploring all options for reducing the need for continued extraction of such minerals through demand reduction and by meeting demand to the greatest extent possible through reuse, refurbishment, and recycling. Many of the most-cited estimates of critical minerals needs — such as some from the International Energy Agency (IEA) and World Bank — neglect careful consideration of improvements in critical minerals circularity. As such, prior to the launch of APEP trade negotiations or related initiatives on critical minerals, we recommend that the U.S. International Trade Commission and other relevant agencies conduct studies to help fill knowledge gaps with respect to how industrial policies aimed at critical mineral circularity in the U.S. and other countries can better contribute to meeting critical minerals demand. These studies’ preparation should include consultation with international experts from industry, academia and civil society, supplemented with public comment periods that encourage and enable input from a full range of stakeholders. From there, any agreement should include among its main pillars commitments by the parties to meet reduce, reuse, and recycling objectives across borders. Making such a commitment is consistent with President Biden’s 2021 “Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,” which already
requires agencies to support resilient supply chains through the prioritization of reused, refurbished, or recycled products and the maximization of environmental benefits through the use of full lifecycle cost methodologies.

- **Supporting Sustainable Development and Job Creation.** Any APEP initiative aimed at improving critical minerals supply chain resilience must prioritize the sustainable development of value chain industries among parties to the pact and in areas from which critical minerals are extracted. In particular, signatories must commit to building new opportunities for the communities, countries, and regions from which minerals are extracted, processed and/or recovered to fully participate in and benefit from the value chain usage of those minerals. Insofar as agreements are between developed countries and developing countries, developed countries must couple supply chain agreements with commitments of support, including financial, technical and other assistance, to help partners sustainably develop strategic industries of their own choosing without delay. The trade terms of such pacts should also pay careful attention to how local content rules, rules of origin, and other measures can best aid in this goal, and social, human rights and environmental impact assessments should be conducted. Countries’ right to regulate foreign investors’ activity in their territories must also be reasserted, and any agreement should be used as an opportunity to further eliminate Investor-State Dispute Settlement (ISDS) rules where they still exist. Any agreement must likewise respect and protect governments’ ability to enact tax and royalty policies designed to ensure that communities most affected by critical minerals operations are receiving direct financial benefits; the Revenue and Payments Transparency Requirements of the Initiative for Responsible Mining Assurance (IRMA) is among possible starting points for additional standards in this area. Emphasis should also be given to the employment of local workers in managerial positions throughout supply chains.

- **Ensuring Free, Prior and Informed Consent.** Any APEP agreement in this area must ensure the free, prior, and informed consent of indigenous communities prior to the development, expansion, or extension of critical minerals supply chain operations and/or waste disposal within, adjacent to, or otherwise affecting their territories or customary lands. This can be accomplished by including binding standards that apply to all aspects of the supply chain, coupled with effective enforcement mechanisms, that require parties to adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill their obligations under the United Nations Declaration on the Rights of Indigenous People and the International Labor Organization’s Indigenous and Tribal People’s Convention (No. 169) and to ensure that critical minerals operations meet all standards set in the Indigenous Peoples and Free, Prior and Informed Consent chapter of IRMA and Performance Standards 7 of the International Finance Corporation. Such standards should apply domestically and within any portions of the supply chain that extend outside the territory of the signatories. Additional standards, modeled in part after the above mentioned, must also be included to ensure the free, prior, and informed consent of additional affected communities for all elements of the supply chain. All indigenous rights, informed consent and other community engagement standards must be subject to swift-and-certain enforcement provisions that include facility-specific enforcement mechanisms and meaningful penalties for violations.

- **Protecting Worker Rights and On-the-Job Safety.** Any APEP trade agreement must also ensure that the rights of workers within critical minerals supply chains are protected so that they, their families, and their communities can better share in the benefits of
these industries. To this end, the U.S. and trading partners should include binding standards that apply to all aspects of the supply chain coupled with effective enforcement mechanisms. These provisions would require parties to adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill obligations set within the International Labor Organization’s (ILO) core conventions on forced labor, child labor, equal remuneration, discrimination and the right to organize, and collective bargaining, and to ensure that such standards are met within the supply chain that may extend outside the territory of the signatories. Standards based on the ILO’s Safety and Health in Mines Convention (No. 176) and IRMA’s Occupational Health & Safety chapter, as well as additional safety standards for those in other sectors beyond mining and processing, are also required for all elements of the supply chain. All labor standards must be subject to swift-and-certain enforcement provisions that include facility-specific enforcement mechanisms and meaningful penalties for violations.

- **Advancing Environmental Protections.** Any APEP trade agreement must likewise contain measures designed to ensure maximum environmental benefits and minimal environmental harm within critical minerals supply chains. This can be accomplished, in part, by including binding standards coupled with effective enforcement mechanisms that require parties to adopt, maintain, and implement laws, regulations, and all other measures necessary to fulfill their obligations under relevant Multilateral Environmental Agreements and to ensure that such standards are met within the supply chain that may extend outside the territory of the signatories. Any agreement must also require parties to ensure that critical minerals operations within their territory and in the supply chain that may extend outside the territory meet all environmental responsibility and other related standards set in IRMA. Additional time-bound commitments — backed by necessary U.S. technical, financial and other support — must be included to minimize greenhouse gas emissions and other forms of pollution during critical mineral smelting and refining operations and to encourage sustainable and renewable energy development. Standards on best practice tailings management and policies preventing deforestation and otherwise protecting water quality, ecosystem health, and biodiversity are also needed, and may also require technical, financial and other assistance. All environmental standards must be subject to swift-and-certain enforcement provisions that include facility-specific enforcement mechanisms and meaningful penalties for violations.

- **Requiring Ownership Transparency.** To ensure that any commercial benefits associated with an APEP agreement on critical minerals are actually advancing the climate, sustainable development, and job creation goals of the countries party to the pact, any such agreement must include standards requiring the disclosure of beneficial ownership information for all those operating within the supply chain. Additional standards are also needed requiring the tracking and disclosure of information about imported critical minerals that are refined, recycled, refurbished, processed, or otherwise used within a party’s territory prior to being exported to another party, as well as any critical minerals or critical minerals products that are simply repackaged or otherwise transshipped. Strong rules of origin can also play an additional role in ensuring that any agreement on critical minerals primarily benefits parties to the agreement. Any disclosure requirements must also be subject to swift-and-certain, facility-specific enforcement mechanisms with meaningful penalties for violations, and the ability of signatory countries to restrict products and business entities controlled by third-party nations from obtaining subsidies, tax credits, tariff reductions, quota reductions, or other
commercial benefits must be fully protected in any pact.

- **Enabling Effective Enforcement.** The standards agreed upon within any APEP initiative are only meaningful insofar as they are accompanied by robust and effective enforcement mechanisms. Prior to any agreement taking effect, the U.S. and other developed countries must offer the capacity-building, technical assistance and other support appropriate to the countries involved in order to ensure their ability to effectively implement and maintain their obligations. From there, ongoing enforcement tools should be designed to guarantee that charges of rights violations coming from affected communities receive serious and quick consideration and that penalties for violations be aimed at the commercial entities directly benefiting from the rights violation rather than entire nations. The goal of such mechanisms should always be to ensure rights are protected as quickly as possible. Enforcement mechanisms should build off the best practices found in the U.S.-Mexico Canada Agreement’s Rapid Response Mechanism, but should be reciprocal among all parties.

- **Embracing Public Participation.** To date, most U.S. trade agreements have been negotiated using corporate-dominated policymaking procedures that have unfairly excluded the majority of civil society organizations and the general public. The recent U.S.-Japan Critical Minerals Agreement skirted congressional approval even as it was declared a free trade agreement for purposes of the Inflation Reduction Act tax credit rules, setting a concerning precedent for other critical minerals agreements. Any new pacts should, instead, be developed through transparent and participatory processes that support responsible critical minerals operations throughout supply chains via ongoing engagement with and input from all interested stakeholders. Best practices in this area include: notice to and consultation with Congress before negotiations with any nation formally begin; publication of the text of initial U.S. proposals for official public comment prior to them being tabled within international negotiations; publication of updated country positions, composite texts and background materials throughout the negotiating process; a congressional vote on any final pact before it takes effect; and ongoing review of enacted pacts, with opportunities for official public comment, at regular intervals throughout their lifespan.

In addition, any APEP agreement on critical minerals should fully respect international human rights, labor, environmental, and climate treaties and instruments that have been signed and/or ratified by the United States.

While this is by no means a comprehensive list of our individual organizations' recommendations in this area, prioritizing the above can help the U.S. improve critical minerals supply chain resilience in a manner that advances our shared goals and values. Thank you for your consideration. Our organizations hope to be a resource to you moving forward.